TRUSTS — CREATION AND VALIDITY — DISCLAIMER BY ONE OF SEVERAL *CESTUIS*. — The plaintiff transferred property in trust to be divided at his death among his three children. One of them was to receive a certain sum, on condition that he immediately pay over $500 thereof to a stranger. This *cestui* refused to accept or be bound by the gift. The plaintiff sued to recover back all the property on the ground that this disclaimer was a breach of condition precedent to the creation of the trust. *Held*, that he could recover. *Sloan* v. *Sloan*, 118 N. E. 709 (Ill.).

When property is transferred in trust for another, the great weight of authority is that the beneficial interest immediately vests in the *cestui* subject to his disclaimer. *Middleton* v. *Pollock*, 2 Ch. D. 104; *Minor* v. *Rogers*, 40 Conn. 512; *Martin* v. *Funk*, 75 N. Y. 134; *O'Brien* v. *Bank of Douglas*, 17 Ariz. 203, 149 Pac. 747. Once created, the only method of terminating a trust where the settlor has not expressly provided therefor is by a renunciation on the part of all the beneficiaries. *Minot* v. *Tilton*, 64 N. H. 371; *Hellman* v. *McWilliams*, 70 Cal. 449, 11 Pac. 659. Disclaimer by one *cestui* does not affect the interests of the others. *Cf. Willis* v. *Thompson*, 85 Texas, 301, 20 S. W. 155. Furthermore, courts have gone a long way in construing express words of condition as creating a trust to be enforced, not by forfeiture, but by the usual methods of compelling performance of a trust. *Koch* v. *Streuter*, 232 Ill. 594, 83 N. E. 1072; *Mills* v. *Grace Church*, 54 N. J. Eq. 659; *Stanley* v. *Colt*, 5 Wall. (U. S.) 119. Under such a construction the *cestui* in the principal case would receive his share of the property in trust to pay part thereof to another. Hence disclaimer by him would be *pro tanto* disclaimer as trustee and not as *cestui*. The court could appoint a new trustee for this amount and the third party's interest would not be affected. *Adams* v. *Adams*, 21 Wall. (U. S.) 185. Although the trust failed as to the remainder of this *cestui's* share in the property, it is difficult to see why the other *cestuis* should not take. If the carrying out of the condition by the former was such an essential part of the trust scheme that failure to comply with its terms would defeat the whole purpose of the trust, the decision could be understood. It would be analogous to cases where the trust can only be carried out by one particular trustee. *Security Co.* v. *Snow*, 70 Conn. 288. The facts of the principal case, however, do not justify such an interpretation.

WILLS — INCORPORATION BY REFERENCE — REFERENCE TO AN EXISTING DOCUMENT AS EXISTING. — A testator directed that trust funds be paid as his wife's last will should direct, and that if it should be impossible to tell whether he predeceased her, his will should be construed on the basis that he had predeceased her. At the same time the wife made a will reciting the power and disposing of the property. Both died in the same accident, so that it was not known which predeceased the other. *Held*, that the property passed according to the wife's will. *In re Fowles' Will*, 118 N. E. 611 (N. Y.).

The case must be taken as a step in the adoption of the predominating doctrine of incorporation by reference. As such it is a departure from the orthodox New York view that incorporation will not be permitted. *In re Emmons' Will*, 110 App. Div. 701, 96 N. Y. Supp. 506; *Booth* v. *Baptist Church*, 126 N. Y. 215, 28 N. E. 238. But in at least one other case the decision seems explicable only on the ground that the court allowed an unexecuted document to be incorporated into the testator's will by reference. *Matter of Piffard*, 111 N. Y. 410, 18 N. E. 718. See also *Condit* v. *De Hart*, 62 N. J. L. 78, 40 Atl. 776. In each of these cases the donee of the power to appoint by his will predeceased the testator giving the power. The will of the testator did not refer specifically to the will of the donee as then existing although the republication of the will of the former by a codicil executed after the death of the latter caused the will to refer to an existing document. The cases are as indefensible as the

instant case, under the strict doctrine of incorporation requiring the reference to be to an existing document as being in existence. *Allen* v. *Maddock*, 11 Moo. P. C. 427; *Magnus* v. *Magnus*, 80 N. J. Eq. 346, 84 Atl. 705; *Hunt* v. *Evans*, 134 Ill. 496, 25 N. E. 579.

BOOK REVIEWS

STUDIES IN THE PROBLEM OF SOVEREIGNTY. By Harold J. Laski. New Haven: Yale University Press. London: Humphrey Milford. Oxford University Press. 1917. pp. (10)+ 297.

The nature of the state and its attributes have been subjects of fascinating interest at least since the time when Aristotle developed in bold outline that science of politics which perhaps it is not too much to say has dominated the thinking of men to this day. A conception of sovereignty appears clearly enough in Aristotle's discussion of the state; but the term itself seems to have been first used by Bodin in his treatise, *De la Republique* (1576). To Blackstone sovereignty was "the supreme authority in which the *jura summi imperii* reside," a definition which has been quoted approvingly by more than one American supreme court. To most of the better known writers it is absolute, supreme, indivisible. This is the quality which prevailing political theory has attributed to the state, a quality, moreover, which even some modern states have not been slow to assert, and not altogether unsuccessfully to employ.

To this claim, this attempted exertion of unlimited authority, Mr. Laski and certain other modern political writers oppose a bold challenge and denial. What, they ask, are the facts? Has the state succeeded *always* in exerting absolute power when it has sought to do so? For a single failure would seem to be fatal to this claim of absolutism.

Very little real thinking about the nature of the state has been done in America. Despite our democratic institutions and ideas, and ignoring our division of the powers of "indivisible" sovereignty and all the numerous "checks and balances" upon governmental functioning which have given a new meaning to constitutional law, we have tended rather docilely to accept, perhaps, through the medium of Blackstone's wholly mechanistic and fictional treatment, a theory of the absolute state, totally at variance with the spirit of our history or with any actuality which we propose to submit to. Doubtless, too, Rousseau's *Contrat Social* did much to shape and color the views of our early publicists in this as in all their political thinking. The more carefully formulated Austinian theories and the profound and compelling philosophy of Hegel have of course been principal factors in holding our adherence to what may be called the orthodox abstraction of sovereignty.

It cannot be denied that the mind finds a degree of satisfaction in the symmetry, the completeness of this theory, and of the orderliness, the strength, and safety which it may seem to assure. But is the theory realized anywhere in the life of states? Can it be? Those who ask this question, and who scruntinize history to find the answer, are sometimes stupidly lumped in one common lot by debonair critics, and their studies lightly dismissed because of a supposed failure to distinguish between the state and sovereignty and government. Nevertheless the realists are having their influence, and absolute and indivisible sovereignty is being questioned and dissected by a school or schools of growing strength and influence. The state theories of the leading modern thinkers, German and French, are admirably, though possibly not wholly judicially summarized and criticized by M. Léon Duguit in 31 HARVARD LAW REVIEW, pages 1 to 185. In England, Maitland has brilliantly uttered an arresting word in